AF-72

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	)
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Teller et al.	)
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Serial No. 09/595,660	)
	)
Filed: June 16, 2000	)
	)
Art Unit: 3626	)
	)
Patent Examiner: Natalie Pass	)
	)
Our Ref: 1148/015	)

**SYSTEM FOR MONITORING
HEALTH, WELLNESS AND
FITNESS**

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

December 10, 2007

REPLY BRIEF

Applicants have reviewed the Examiner's Answer filed October 9, 2007 and

pursuant to 37 C.F.R. § 41.41 submit this Reply in response thereto.

In this Reply, the Applicants have chosen to focus on essential elements of repeated that have been the subject of misunderstanding throughout this case. By not addressing any other of the Examiner's arguments in this Reply, the Applicants are attempting to foster efficiency with brevity; however, Applicants are expressly not admitting the accuracy or correctness of any such other of the Examiner's arguments not addressed in this Reply. Applicants respectfully submit that such other of the Examiner's arguments are adequately addressed in the Applicants' Appeal Brief, and therefore the Applicants invite the Board to review the Applicants Appeal Brief for the Applicants' position on any of the Examiner's arguments not addressed in this Reply.

There is an essential limitation that Applicants have explained exhaustively in their Appeal Brief. This essential limitation is present in both independent Claims 121 and 124. The language claim language for this limitation is as follows:

> "...calculating, from said first and second parameters, quantitative status information indicative of the relative degree of achievement of said individual's performance with relation to said physiological status goal..."

The essence of the above limitation is a calculating step wherein the inputs to the calculation are the first parameter and the second parameter. The output is a particular type of quantitative status information. Therefore, to anticipate this limitation, a reference must disclose a method <u>wherein the "calculation" step utilizes two parameters to yield an output</u>, i.e., quantitative status information indicative of the relative degree of achievement of said individual's performance with relation to a physiological goal. The reference does <u>not</u> anticipate if it simply discloses a system capable of measuring or displaying two parameters.

The Applicants have reviewed Examiner's Answer with respect to her contention

that U.S. Pat. No. 6,790,178 to Mault et al. ("Mault et al.") discloses the above "calculating" limitation and can find no credible support for such contention. In order to demonstrate Applicants' contention that the Examiner has not articulated a clear case of anticipation, and again, that Mault et al. do not anticipate this above-discussed limitation, the Applicants have included selected excerpts of the Examiner's Answer below and have supplied a response at each relevant point. The first of such is as follows:

> *Examiner interprets Mault's teachings of 'physiological monitor measures <u>one or more physiological parameters</u> and stores the resulting data to memory. Optionally, the monitor may have onboard data processing [reads on 'calculating'] and/or display. At a later time, the physiological monitor may be interconnected with, or otherwise placed in communication with, a PDA so that data may be transferred from the monitor to the PDA. The PDA may enable additional functionality or provide processing [reads on 'calculating'] and display of physiological data" (emphasis added) (Mault; column 5, lines 25-33),...* See Examiner's Answer, page 19. See also paragraph bridging page 21 and 22.

Applicants' response:

The Examiner is contending that, by measuring one or more parameters and having a processor, Mault et al. disclose calculating "something" from <u>two</u> parameters. Applicants would like to point out two problems with this analysis. First, processing does not necessarily read on calculating. Second, and more importantly, assuming for argument's sake that "processing" is "calculating", the simple disclosure of the measurement of one or more parameters plus "processing" is insufficient for anticipation of the relevant limitation because this simple disclosure is silent on whether two parameters are included in such "processing", and if so, on what output is yielded therefrom.

Returning to the Examiner's citations of Mault passages, the Examiner also cites the following passage:

"the PDA preferably stores testing data from one or more physiological monitor modules to allow the use of data in health and fitness tracking as well as in a variety of software applications. In another embodiment of the present invention, the physiological monitor modules include storage means such as memory for storing data from one or more sensors. Either during or after the test, the data from the storage means is transferred to the PDA for processing, display, and storage (Mault; column 2, lines 51-60),... See Examiner's Answer, page 20. . See also paragraph bridging page 21 and 22.

Applicants' response:

It is true, and the Applicants do not contest the fact that Mault et al. disclose a system capable of storing and processing data from multiple sensors, i.e., multiple parameters. See Applicants Brief, page 11 in which the Applicants state: "[a]ccording to Mault, the PDA could act as a control and display device for many different kinds of physiological monitoring accessories." Indeed, the prior art is glutted with similar references that disclose systems capable of sensing, displaying, and even processing data from multiple sensors. But none of the prior art of record disclose the marriage of one sensed parameter with another to yield a singular class of output: quantitative status information indicative of the relative degree of achievement of said individual's performance with relation to said physiological status goal. Mault et al. similarly fail in this regard because Mault et al.'s disclosure of the mere transfer of data (albeit possibly from multiple sources, i.e., parameters) to the PDA for processing leaves out a crucial claimed element: that the "processing" is a calculation, from <u>two</u> parameters, and the output of such calculation is quantitative status information indicative of the relative degree of achievement of said individual's performance with relation to said physiological status goal. In other words, Mault et al. may very well process data from multiple sources, but they do not disclose combining those data sources together to yield quantitative status information indicative of the relative degree of achievement of said

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individual's performance with relation to said physiological status goal. Mault et al.

processes various data streams or sources in order to display or otherwise communicate

them singularly to the user. For example, Figure 12 in Mault et al. displays an acoustic

signal from the heart and an EKG signal from the heart. Obviously, there was some

processing necessary to display these two parameters, but such processing does not marry

the two parameters together to provide quantitative status information indicative of the

relative degree of achievement of said individual's performance with relation to said

physiological status goal. Rather the system in Mault et al. merely displays these

parameters together on the PDA screen. Such a display is not a separate class of data,

i.e., quantitative status information indicative of the relative degree of achievement of

said individual's performance with relation to said physiological status goal.

Returning the passages of Mault et al. cited in the Examiner's Answer:

> *"the PDA stores exercise information received from the pedometer*
> *module and calculates various exercise parameters such as calories*
> *burned, distance covered, average speed, etc. The PDA may use this*
> *information for a variety of purposes, such as feedback to the user"*
> *(emphasis added) (Mault; column 12, lines 14-19),* ... See Examiner's
> Answer, page 20. See also paragraph bridging page 21 and 22.

Applicants' response:

The passage of Mault et al. discloses one particular embodiment that utilizes a

pedometer. In this embodiment, the PDA "calculates". There is only one input to this

calculation, i.e., pedometer data. And such input is used in the calculation to output

various exercise parameters such as calories burned, distance covered, etc. Again, there

is no disclosure of the calculation involving two parameters.

The Examiner's Answer turns next to the following passage:

> *"[t]he person uses a pedometer module ... [...] ... [t]his data is ... [...]...*
> *used by the software to determine [reads on "calculate"] how the*

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person's performance compares to their goals [reads on "quantitative status information indicative of the relative degree of achievement of said individual's performance with relation to said physiological status goal"]. As part of the health or fitness management program, it may be preferable to track other factors such as blood pressure, heart rate, or blood glucose. The PDA may also prompt the user to measure these parameters at appropriate times. The user may then insert the appropriate module into the PDA, perform the appropriate test, and have the data automatically transferred into the program" (Mault; column 7, lines 1-11), ... See Examiner's Answer, page 20. See also paragraph bridging page 21 and 22.

Applicants' response:

Here the Examiner focuses on the pedometer embodiment disclosed by Mault et al. This passage, admittedly, provides the most relevant disclosure with reference to the invention. It is true that Mault et al. disclose using the data generated by the pedometer embodiment to compare with relation to the user's goals. However, it must be emphasized that the data generated by this particular embodiment is not generated from a calculation that utilizes two parameters as input. As discussed amply above and throughout the papers filed in this Appeal, Mault et al. do not disclose the calculation of quantitative status information from a first and a second parameter. And while Mault et al. disclose that, "it may be preferable" to track other parameters, there is no disclosure in Mault et al. elaborating on what the system does with those additionally tracked parameters, and there is no disclosure of the marriage of this additionally-tracked data to the data generated in the pedometer module. Thus, at best, Mault et al. disclose using one parameter, i.e., from the pedometer module, to make a comparison with the user's goals, all of which is concomitant with the tracking of other parameters. Such does not anticipate the above-discussed limitation.

Finally, with respect to the "calculating" limitation, the Examiner's Answer cites the following passage:

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"almost any type of physiological monitor may be incorporated into the present invention. Examples of physiological monitors, which will be described in more detail below, include a calorimeter module for measuring metabolic rate, a spirometer module for measure breath flow and volume, a pedometer module for measuring motion, a heart rate, an EKG/heart sound module, or a pulse oximeter for measuring cardiac-related parameters, a body fat module, a blood pressure module, a body temperature module, a blood glucose module, an ultrasonic sensor for measuring respiration, pregnancy-related factors, bone density, or posture, a food or body weight module, and others" (Mault; column 6, lines 14-29), See Examiner's Answer, page 21.
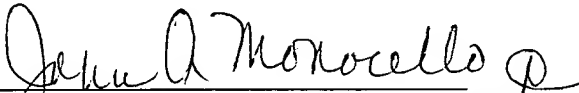
Applicants' response:

Since Mault et al. are concerned with providing a system in which different sensing modules communicate with a PDA, it is not surprising that Mault et al. disclose a laundry list of alternatives for such sensing modules. Applicants do not disagree that the system disclosed by Mault et al. includes various sensor modules; however, as mentioned repeatedly above, there is no disclosure of utilizing multiple sensed parameters together as inputs to a calculation where the output is the claimed quantitative status information.

In making the anticipation rejection of independent Claims 104 and 124, the Examiner has assembled bits and pieces of disparate embodiments disclosed by Mault et al. into an entity- notably one that is entirely created by the Examiner- that allegedly anticipates the claims. The Examiner alleges that it is the "entire" reading of the reference which supports her arguments with respect to anticipation. However, if one reads the reference as a whole, Mault et al. do not support such intra-reference hindsight reconstruction, and as such Mault et al. do not disclose the claimed invention. Mault et al. was not at all concerned with the marriage of data from two different parameters, so it is not at all surprising that such disclosure does not exist.

On all other points of contention, Applicants stand on the arguments made in their Appeal Brief.

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No fees are believed necessary to file this Reply Brief. If a fee is required, authorization is given to charge Deposit Account No. 50-0525. A duplicate copy of this authorization is enclosed.

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